

■ ARE YOU READY FOR SOME SIGNIFICANT CHANGES?

NEW SED REGULATIONS ARE NOW IN EFFECT

by Margaret M. Gatti, Esq.
Attorney, Gatti & Associates Law Office

Recently implemented changes to the Foreign Trade Statistics Regulations and the Export Administration Regulations have altered the way that Shipper's Export Declarations are completed.

Effective October 2000, exporters, forwarders and foreign buyers must deal with a new set of responsibilities due to the implementation of new regulations that dramatically change the process of completing a Shipper's Export Declaration (SED or export declaration).

The SED is the basic form that is used to report export transactions. It is prepared by the exporter or a forwarding agent and presented to the U.S. Customs Service at the port of export. The information contained in the export declaration is used by the Census Bureau to tabulate export statistics and by the Bureau of Export Administration to regulate the export of commodities subject to legal restrictions.

The changes to the SED come as part of amendments to the Foreign Trade Statistics Regulations (FTSR) and the Export Administration Regulations (EAR) that were first proposed more than two years ago. After numerous meetings and seminars with parties most likely to be affected by the new regulations, revised rules were published on July 10, 2000. Exporters were granted a 90-day grace period for compliance.

This period ended on October 10, 2000, when full compliance with the new regulations became mandatory.

The FTSR were amended in order to clarify the responsibilities of U.S. exporters, U.S. forwarding agents and foreign buyers in completing and filing an SED. The requirements governing the preparation and filing of export declarations by U.S. forwarding agents on behalf of U.S. exporters or foreign buyers are also modified under the new rules.

Changes to the FTSR also clarify the formula for reporting value on an export declaration. The value is calculated by adding the selling price for the goods exported pursuant to a sale to the charges for inland freight and charges for inland insurance.

■ A DUAL-PURPOSE FORM

The dual nature of the SED was made more explicit by the changes in the FTSR and the EAR. The export declaration serves as a document used by the Census Bureau for statistical reporting purposes. It is also used as an export control document for the Bureau of Export Administration (BXA) and other government agencies. Both of these agencies have different reasons for wanting more accurate information on the SEDs: The Census Bureau because inaccurate data have led to artificially low export statistics; The Bureau of Export Administration to better ensure that the export of restricted goods, such as those used in weapons manufacture, are securely under the control of the proper authorities.

How will the new rules affect parties in international transactions? The important thing to remember is that there are two sets of rules. The Census rules specify who must supply information for SEDs. The Bureau of Export Administration's rules specify who is responsible for obtaining an export license for routed transactions.

According to the amended FTSR, the party responsible for completing and filing the export declaration for an export transaction varies with the assumption of export clearance responsibility. If a U.S. exporter assumes export clearance responsibility (a standard export transaction), the exporter or its designated U.S. forwarding agent is responsible for completing and filing the SED.

Under the new regulations, an exporter who has assumed export clearance responsibility must, if the company is preparing the SED itself, insure the accuracy of all the export information reported on the SED, sign it, and file (or transmit electronically) the declaration with the U.S. Customs Service.

If an exporter is using a U.S. forwarding agent to complete the SED, the exporter must provide the forwarding agent a power of attorney or other written authorization and the export information required to complete the declaration. Additionally, the exporter must maintain sufficient documentation to support the information provided.

If a foreign buyer assumes export clearance responsibility, as is typically the case

in an ex-works or routed export transaction, the foreign buyer must authorize a forwarding agent in the United States to perform the export clearance responsibilities, unless the foreign buyer is in the United States at the time the export is made.

THE EXPORTER'S RESPONSIBILITIES IN ROUTED TRANSACTIONS

In routed export transactions, the U.S. exporter involved must now provide the buyer's forwarder with the following information:

- the U.S. exporter's name and address;
- the U.S. exporter's employer identification number (EIN);
- a description of the commodities, the Schedule B number, the quantity, the value and the Export Control Classification Numbers (ECCNs) for the commodities, or sufficient technical information to enable the determination of the ECCNs for commodities to be exported, and
- any information that the U.S. exporter knows will affect the determination of export license authority for the commodities to be exported.

The new regulations also require that a U.S. exporter must maintain sufficient documentation to support the information that the exporter provides to the foreign buyer's forwarding agent.

THE FORWARDING AGENT'S RESPONSIBILITIES IN ROUTED TRANSACTIONS

As to the responsibilities of a U.S. forwarding agent in a routed transaction, the amended FTSR require that the forwarding agent take the following actions:

- obtain from the foreign buyer a power of attorney or other written authorization to complete the SED on the foreign buyer's behalf;

- prepare, sign and file the SED or Automated Export System (AES) record on behalf of the foreign buyer based upon information provided by the U.S. exporter;

- maintain documentation supporting the information reported on the SED or AES record; and

- upon request from the U.S. exporter, provide verification that the information provided by the U.S. exporter was accurately reported on the SED or AES record. The form of verification provided to the U.S. exporter may range from a copy of the export declaration to a simple statement, signed by the forwarding agent, attesting to the forwarding agent's accurate reporting of information provided by the U.S. exporter.

A NEW TERM: U.S. PRINCIPAL PARTY IN INTEREST

Both of the above sets of regulations focus on the party that is now called the U.S. Principal Party in Interest (USPPI), a new term that replaces exporter on the export declaration form. The USPPI, which in the past was often uninvolved in routed transactions, now has responsibilities for supplying data for the export declaration.

The USPPI is the party that receives the primary monetary benefit from the export transaction, such as:

- the U.S. manufacturer, if the merchandise is sold directly for export to a foreign buyer (the so called "foreign principal party in interest," or FPPI);
- the U.S. buyer (such as a wholesaler or distributor), if the U.S. manufacturer sells the merchandise domestically to a U.S. buyer who then sells the merchandise for export to a foreign buyer;
- the "U.S. order party," if it directly negotiates with a foreign buyer and arranges the sale and export of the merchandise to a foreign buyer. The amended regulations define "U.S.

order party" as the person or entity in the United States that conducts direct negotiations or correspondence with a foreign buyer and consequently receives an order from the foreign buyer; or

- the foreign buyer/FPPI, but only if the buyer is in the United States when the commodities are exported.

Regardless of which party has assumed export clearance responsibility, the exporter listed on the export declaration must always be the U.S. principal party of interest. The Census Bureau has made it clear that a U.S. forwarding agent may never be the USPPI (exporter) for the SED, unless the agent acts as an "order party." However, in a routed export transaction, for export control purposes under BXA regulations, the U.S. forwarding agent of a foreign buyer can be the applicant on an export license.

While these changes may be daunting at first, they are designed to collect more accurate data on export transactions and ensure that transactions are compliant with existing regulations governing export licenses. Assistance with the new rules is as close as your fingertips. ■

For more information on the regulations governing the Shippers Export Declaration, consult the following sources:

Bureau of Export Administration:
The Bureau's home page is www.bxa.doc.gov. Click on "frequently asked questions" to obtain basic information on export requirements. For more detailed information, please call Sharron Cook at (202) 482-2240.

Census Bureau, Foreign Trade Statistics:
The Census Bureau maintains a page that contains foreign trade data and a downloadable version of the SED form. The web site is www.census.gov/foreign-trade/www. For more detailed information, contact Frank Korpusik at (301) 457-2238.

U.S. Customs Service:
The import/export page of the Customs Service web site is located at www.customs.ustreas.gov/impexpo/impexpo.htm.